

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5452**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., January 12, 2005, in Sacramento, with Chair Cynthia K. Thornton presiding.

2. Roll Call: Members

Present

Absent

Cynthia K. Thornton, Chair

X

Ann Richardson, Vice Chair

X

Jack Cox

X

Don L. Novey

X

Virginia Strom-Martin

X

3. Approval of the Minutes:

The minutes of the December 8, 2004 Board meeting were approved.

4. Chair's Report:

Chair Cynthia Thornton reported she and Executive Director/Chief ALJ Jay Arcellana gave a power point presentation to an employer group relating to the administration's reorganization proposal. They are quite concerned about the extra costs that they will incur in having to appeal directly to Superior Court, and dealing with judges who are not familiar with unemployment insurance law as a specialty. The proposal is to combine three boards, the CUIAB, the WCAB, and the OSHAB, into a single nine-member board, but beyond that it lacks a lot of detail. The Little Hoover Commission will be holding hearings on this proposal on January 25th and 27th.

There is a retirement dinner for Presiding Judge Ricardo Munoz tomorrow night in Los Angeles, and I would like take this opportunity now to honor Judge Munoz's years of service to this Board. He is an outstanding presiding judge and I greatly admire what he's achieved in the Los Angeles Office.

There will also be a retirement lunch today for Kris Silva, one of our favorite employees here in Sacramento.

5. Board Member Reports:

Vice Chair Ann M. Richardson that she sat in on a press conference call that Secretary Bradshaw conducted last week. In addition to recommending the aforementioned consolidation of boards, she commented in relation to the IWC that it would be best if the Governor decided on any increase in minimum wage for

California workers. Chair Thornton stated that Secretary Bradshaw also commented on that topic at the Agency Meeting yesterday, stating that the minimum wage issue would not be one decided at the Labor Agency level.

Member Novey stated that he served on the IWC, which along with the CUIAB has been a long-standing board dedicated to protecting California workers. Sometimes we need to pay attention to good government and not let the rights of the working people get trampled.

Vice Chair Richardson reported that one of Secretary Bradshaw's comments was that unemployment claims are actually down, impliedly justifying the reduction in board members. In point of fact, however, appeals to the board itself are up, and expected to remain so for quite some time.

Chair Thornton reported one additional item: Member Steve Maviglio has accepted a job with the Speakers office and has resigned from our Board. He will be missed. He was a very hard working member of this Board and we extend to him many wishes of good luck.

6. Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief ALJ Jay Arcellana reported that Deputy Director Mary Walton-Simons is ill today and unable to attend, so he would be giving her report when the time comes.

First item of Executive Director/Chief ALJ Jay Arcellana's report relates to the Governor's proposed budget for CUIAB. Our position authority has been decreased by 17 positions from last year, with a total now of 701.8 positions.

Chair Thornton commented that Secretary Bradshaw reported yesterday that Agency received 62 additional positions in the new budget.

Executive Director/Chief ALJ Jay Arcellana stated it is too early to tell whether or not the decrease would affect our ability to liquidate the workload, but he would be meeting later this week with the planning units to look into that issue. Further, there will be a May revision and another revision in October, so adjustments are always possible. Our dollar authority was actually increased by \$816,000 to 75.5 million. To put that into perspective, in 03/04 our dollar authority was 64.8 million, and in 04/05 it was 74.7 million.

Chair Thornton asked if we can't spend the money on salaries, what is the rationale for giving us extra money? Executive Director/Chief ALJ Jay Arcellana stated that he had not yet looked at the narratives, but the increase might be for cost of living increases, promotions, that type of thing.

Executive Director/Chief ALJ Jay Arcellana also reported that last Thursday, immediately after the Governor's budget address, staff from Agency came to the Venture Oaks complex and met with staff from CUIAB to discuss the proposed

reorganization. It was informative. We video taped that presentation and we plan on showing it again for staff who were not able to view it. We'll also take that presentation and make copies so the Field Operations can view it as well. Also, Bob Dresser, Agency Chief Counsel, came over to meet with Executive Director/Chief ALJ Jay Arcellana. It was a very good meeting, and covered workload issues, the budget, and the proposed reorganization.

Finally, staff from P&PM will be beginning work on a customer survey which we will work at the local level so we can get a sense from our customers what they think about our service them. In addition, P&PM is working along with IT to updating our website. There is a sense from the PALJs and throughout the Agency that the website should include our historical workload numbers so the people will have an appreciation of what we do and what we're all about.

Just by way of information and to give a sense of the comparative sizes of the other two boards that are proposed for consolidation with CUIAB: OSHAB has a total staff of 30 individuals, with a PALJ position in Sacramento and one in West Covina. They supervise 8 hearing officers. They have a legal counsel which supervises two other legal counsels and the rest of the staff consist primarily of legal typists. The Worker's Compensation Appeals Board is headquartered in San Francisco; it has 7 board members and 29 support staff, including a secretary, a deputy commissioner and two deputy commissioners; one worker's compensation judge and 11 other staff.

Member Novey asked about the effect of some of the administration's proposed changes upon future employee recruitment if the state goes to a defined contribution versus a defined benefit? Have you given that any thought or have you been given any direction in that area?

Executive Director/Chief ALJ Jay Arcellana replied that they have given that a lot of thought, and they believe there will be significant problems down the road. Currently PALJs make the same salary as the ALJ IIs whom they supervise. So recruitment and retention of that position is difficult right now. In a recent PALJ exam we only had 20 some odd candidates out of 200 judges who were potentially eligible. Recruitment and retention only become more of a problem as state salaries and benefits are further reduced. The perspective on it is, I don't need the headaches of personnel and other management issues when I'm not making more than the people I supervise. For incoming judges the salary has always been an issue. Many people come in and they want to do the job, they'd like to take the positions, but they decline primarily for salary issues. If they do accept it's primarily because of a change in lifestyle, just to leave the private sector. Those recruitment problems are multiplied by the fact that the average age of our ALJs is right around 60 years, so retirement is an option for many. As a matter of fact, as we met at the last PALJ meeting we realized that of all the PALJs currently sitting in their jobs, probably only 3 would be in their positions during the 3 or 4 years given their age and the changing conditions of employment.

7. Branch Reports:

a. Executive Director/Chief ALJ Jay Arcellana reported he just received a phone call this morning that Gil Knipe, our PALJ in Inglewood who handled the grocer's trade dispute, had a heart attach yesterday morning. He's fine now, but he will be in recovery for quite some time.

Executive Director/Chief ALJ Jay Arcellana stated that he wanted to reflect on the Chair's comments about PALJ Ricardo Munoz out of Los Angeles. He was just a wonderful PALJ. The Los Angeles Office has always been one of the most consistent performers in the State

Member Novey asked how long PALJ Munoz had been there.

The reply was that Ricardo has been with the Agency in excess of 25 years, a PALJ since 1988. And he has dealt with a lot of personal while handling the difficult demands of his PALJ position. PALJ Zaida Hackett from Oxnard will take over in the Los Angeles Office. Interview for her replacement in Oxnard will take place immediately.

Executive Director/Chief ALJ Jay Arcellana introduced PALJs Hugh Harrison and Tim McArdle who would be giving the workload presentations for the field.

PALJ Hugh Harrison: We finally are seeing a drop off in the work, the unemployment insurance work coming into our offices. The last 3 months in particular, but certainly the entire fiscal year, has shown a decrease over the previous 3 or 4 years since the beginning of the recession. However, in December we had more new cases than we had in the previous 2 months, so it doesn't look like it's in free fall. It looks like it came down and it's starting level off. I think the most interesting thing to start with would be for the entire calendar year. For the entire calendar year of 2004 the Field disposed of 289,951 cases. And actually we disposed of far more than that because the way our numbers are calculated when Gil Knipe disposes of 10,000 grocery strike workers, that is counted as one disposition because he's sending out a group decision. So in terms of actual claimants who had decisions rendered in 2004, it's well over 300,000. This is an all time high. And we've done that through a variety of calendaring procedures, hiring staff and other techniques. This year in 2004 we issued approximately 12,000 more decisions than new cases. And that has all occurred over the last 3 to 4 months. Since the beginning of the fiscal year we've decreased the number of open cases of UI claimants by about 10,000 and additionally we've issued decisions for more than 10,000 claimants on the trade dispute, mostly the grocery strike but also the MTA, TMA, and others. We still have a substantial number of those claimants outstanding. We don't know yet what's going to happen with the hotel workers in the bay area. There's been talk of a settlement but we still have those cases. The hotel workers in LA are holding their breath but they may walk as well. So, there is that potential for growth. But it appears that we have crested. In fact, in our last quarter we verified or registered fewer cases in the unemployment program than we have since the 3rd quarter of 2001.

Chair Thornton stated that we've discussed at prior meetings what the optimal backlog is. Are we at that optimal level yet?

Hugh Harrison--No, we have not hit the optimal level yet. But what we have done is gotten it down to where it's at a very acceptable working level. One of the reasons why we're not at the optimal level yet, which Tim will be addressing more, is because we've been emphasizing the UI program. What's happened is the workload has decreased sufficiently in UI so that we can now put additional resources into the tax program. The disability program has been more or less functioning well for the last 3 or 4 years. We have had more decisions than intake in each of the last 3 years and the DI caseload has dramatically dropped in terms of backlog, not in terms of new cases but in terms of backlog over that time. The number of new cases has been relatively stable. What's changed is because of the additional staff and greater caseloads we've been able to put out more decisions. We've worked that backlog down substantially in disability so we're very comfortable there. In the Field we're looking at continuing to work in the same way we have. If the incoming caseload stays the same then we'll be able over the next 6 to 12 months to make the same exact strides in the tax program as well as get the UI program down to that optimal level that we were discussing before.

Executive Director/Chief ALJ Jay Arcellana stated he would make three observations here. Obviously he does a good job and I want to commend him for his report. When Hugh mentioned the fact that the workload crested in 2004, that that was the highest we've had every year for the past 3 or 4 years, it's been the highest year. It's just gone through the roof. Second, for the past 2 or 3 years now the judges and the support staff have in fact been hearing higher caseloads than has been traditionally assigned to them. The judges have been hearing 2 more cases per week and obviously, with respect to the judges, the numbers equate for an increase in support staff as well. All the while we've also been able to corral the quality issue standards required by the DOL, we're meeting quality standards. I just think it's remarkable given the workload, the staffing levels and that type of thing what we have accomplished. Third, when we speak about the overall workload I think there are some conceptions here - misconceptions about working inventories and backlogs. I would have to say that probably a year ago or a year and a half ago we had some backlogs we were concerned about. Now we're talking about no backlogs and just working inventories. I am also proud of the Field because we can say that for the majority of our cases over the past 3 years now no one has waited more than the 90 days for a decision, remarkable given the numbers we've had to deal with.

Chair Thornton commented that it's particularly remarkable when you compare it to the recession in 1992 where people were waiting 8 or 9 months for a decision.

Executive Director/Chief ALJ Jay Arcellana replied that's correct, and to put it into perspective again going back to 03/04, we only had total staffing numbers of 559. That's when the workload crested. There was a freeze on hiring. We had to struggle through 03/04 and 04/05. And it was only toward last year when we got

the authority to hire people when the ceilings went up to 718. So for all those years or for those 2 years we were really understaffed. And so I think during that time period there may have been a backlog although we were getting decisions out within 90 days, and now I think the working inventories are pretty close to where we want them to be in that now we can devote equal attention to all of our programs, tax, SDI and unemployment insurance. So again I want to commend the Field. I want to commend Hugh Harrison on the work he does on the workload and I just want to put things in perspective. Now that as Hugh has mentioned that we are on top of that, we do want to address the last program which is the tax program. We're about to meet with the PALJs and do some planning on that. We're about to embark on a very aggressive way to deal with the tax caseload and Tim McArdle is going to brief the Board on that.

PALJ Tim McArdle agreed, stating that as Hugh and Jay have already mentioned, during times of increasing benefit workload we tend to de-emphasize the tax workload because by necessity the benefit cases have to take priority over the tax cases. But since the benefit workload has been declining over the past few months the offices in response to this have been setting increasing numbers of tax cases. But we're now at the point where we think we can take a concerted effort to accelerate the tax workload and make sure that we have our inventory at acceptable levels and we don't have any older cases outstanding. So in that regard we're taking a number of steps. In the Field offices we have 1123 cases outstanding right now. The vast majority of these cases are employment status cases as to whether the workers are employees or independent contractors and corporate office or liability cases. We're going to start hearing these cases on an accelerated basis. On a gradual basis we'll start, for example, perhaps a half dozen cases per office per week and we'll gradually pick it up from there. We have given the Department an informal heads up that we're doing this so that they can prepare to redirect their resources to meet this increase in hearing workload. We'll be hearing the oldest cases first and making sure that we don't have any older cases outstanding there. We also have cases in the Field Operations Headquarters Office, benefit cases, tax cases are filed with Headquarters. They are registered here and we have them in waiting in inventory awaiting the Department's Answer to Petition. When we receive the Answer to Petition then we send it out to the Field Offices. Currently we have 1785 status and corporate office or liability cases in Field Operations awaiting the Department's Answer to Petition. Now it typically takes the Department 6 months to file its answer. However we have 53 cases in which the petitions were filed in 01 and 02 for which we have still not received an answer. In 352 cases which were filed in 03 we still have not received the answer despite multiple requests for the Department to file its answer. We're only required to wait 30 days for an Answer to Petition so the first thing we're going to do is simply take all these cases and send them out to the Field Offices so they can be set for hearing.

Chair Thornton asked, now we've told EDD all of this, right?

PALJ Tim McArdle replied that yes, we are in the process of telling them that. The answers are helpful. The Judges like the answers but to be truthful in recent

months the Department responses are just one page statements and therefore not helpful. So, we don't see any benefit in holding the cases for year after year waiting for the Department's answer. Those cases are now going out to the Field to be set for hearing. We also have 4127 accounting type cases in Field Operations Headquarters. These are the so-called tax ruling cases. These cases are filed when employers file protests to the line item charges ---- annual Statement of Charges to their reserve account. So we are hearing those at a rate of about 350 a month. That's up from about 250 a month which we were doing most of last year. And that's just about the Departments capacity to representing these cases. We will try to push them to make sure that they're hearing these cases as fast as we reasonably can.

Chair Thornton stated that Secretary Bradshaw announced yesterday that EDD under the new budget is getting 147 new personnel years to clear their audit backlog and 11.4 personnel years to deal with SUTA cases, so they may have some additional bodies to deal with that.

PALJ Tim McArdle replied that that's good news. You should also be aware that we handle a couple of different types of cases at the Field Operations Headquarters which you don't see at the Board. We have statutory authority, in fact, we're required by law to approve their offers and compromise and their settlement cases. We receive about 30 offers and compromise each month and we turn those around on an average of 30 days. With the settlement cases we receive around 20 a month and we turn those around within 14 days. So we feel like we're being very responsible with those two programs. In the coming years we anticipate that our tax workload is going to increase and that's because of the increase in the tax rate that the employers are paying for their unemployment insurance contribution. As you all know the Unemployment Insurance Trust Fund has been teetering on the brink of insolvency for the past year or so. In response to that when employers paid their unemployment contribution according to seven schedules, right now we're on the highest schedule, Schedule F, recently a 50 percent surcharge kicked in. We're actually now on Schedule F plus. Normally employers pay their contribution at a rate of 0.8 percent on the first \$7,000 in wages paid in the calendar year up to 5.4 percent. With this 15 percent surcharge the rates are now going to be a minimum of 1.5 percent to a maximum of 6.2 percent. So, because they're paying more we anticipate that they will be more resistant to their tax levies and the assessments that the Department's levied on them and we think we will get an increase in workload because of that. And also in the State Disability Insurance Program the taxable wage base there has changed. It's gone from \$30,000 per year back just about 3 or 4 years ago up to \$79,418 this year. Employees pay that contribution at the rate of 1.08 percent. Now employees pay it but the employer is required to withhold that and get it to the Department. If they don't do that they're liable for those contributions

Chair Thornton commented that one of my concerns about beginning to clear out tax cases as a former small business owner, most of our tax cases are small businesses and most of these cases are sustenance and that has the potential -- and, in fact, puts a lot of these people out of business. Having longer times in

terms of us setting hearings allows them to remain in business a lot longer. I know there's the opposite argument, Judge Canar and I have discussed this that these people shouldn't be in business. At the same time they're part of the California economy and that is a concern. Have you given any thought to that?

PALJ Tim McArdle replied they haven't. Frankly we respond to the petitions as we receive them. Several years ago the Legislature enacted a taxpayer's bill of rights, in the UI Code. It allows for the Department to make reasonable payment arrangements so that it does not force these smaller businesses out of business. You are right in stating that the majority of tax petitions do involve small businesses.

Member Novey asked how many of these cases involve a business, such as a Burrito House in Los Angeles or something, where they get dinged for \$30,000 or \$40,000?

PALJ Tim McArdle stated that what you just described is a typical tax case that you see in the Field. A small business, often times it's an immigrant business, the assessments are \$30,000 or \$40,000. Half of that is the personal income tax they failed to withhold and remit to the Department. That's a typical case. We do have a handful of cases, about 30 in all that involve very large businesses, some of the largest businesses in California. These are what we call multiple entity cases where large employers take their payrolls and shift it from one entity to another to a lower contribution rate. And that's cost the UI fund millions and millions of dollars in recent years. It's a problem that's called national in scope. It's being addressed at the federal level too. But we have 30 of these cases in arbitrary right now and they are being heard at the present time.

Member Richardson stated that Cynthia's concern about the small business is very valid, and asked whether employers continue to accrue tax liability and penalties while their cases are outstanding?

PALJ Tim McArdle replied that the penalties are assessed by statute according to the type of assessment that it is. But interest accrues on the principal and on the penalties while these cases are outstanding. Surprisingly we don't hear many complaints from petitioner's about not getting their cases set more promptly.

Chair Thornton commented that that is because they're going to be out of business anyway no matter what the assessment is, and those cases end up in bankruptcy and the State never gets the money anyway.

Executive Director/Chief ALJ Jay Arcellana commented that as we deal with the tax workload he thinks the Board will be somewhat surprised to listen to the differences in the case age of a tax case versus the case age of a UI case for instance. With respect to the UI case, for instance, our judges will hear 8 to 10 of those per day with a notice requirement of 10 days for the parties and the tax case I think the notice requirement is 30 days. Often when the case is set it always involves attorneys and they will call up and ask for continuances, the Department

gets involved, we need to schedule our cases around their availability to represent at hearings. There are many more subpoenas, many more documents and the dollar amount is greatly enhanced. A tax case will take usually a minimum of one day, sometimes more than one day for one case. So, the case age of a tax case is much larger than the typical UI case just because of these built in parameters. And so when we talk about the tax workload it's important to keep in mind that we're talking about two different things. So when we talk about a tax case that may be six months to a year old, in fact that is current. And that's why we don't receive complaints from very many petitioners because they appreciate the time involved in dealing with this thing. Much different from a UI case where we could hear complaints if it's beyond 90 days. So as we look at the tax inventory, please keep that in mind when we talk about the case age of a tax case.

b. Deputy Chief ALJ Julie Krebs reported that in December 2004 they registered 1,712 cases, 6 percent above our calendar year average. They closed 1,836 cases, 18 percent above the calendar year average. Our balance of cases currently is 2,793 cases, about a six-week inventory for Appellate Operations. Our very optimal level would be 4 weeks.

Chair Thornton asked if Appellate Operations was still loaning judges to the Field?

Deputy Chief ALJ Julie Krebs replied that they are not, given the size of their inventory. As indicated Field Operations registration is going down but their caseload still continues to stay at the same level or possibly even higher. We get our appeals based on what they close. So, if they're closing a lot of cases, even if their registrations are going down we still get a 7 percent appeal rate. And so that's why you'll see that we still continue to get cases and appeals. We're trying to take care of our inventory and I will say that in the last six months we have closed more cases than we have registered. So that's a good thing and that's why we're in pretty good shape at a six-week inventory. Our case aging went down in December 2004 from 61 days to 55 days. While we could increase our numbers a little bit more I'd say we're in pretty good shape and we just want to continue on the uptrend as we've been doing. To reflect on Board Member Richardson's question, I looked at what our numbers were over the last several years, and Appellate Operations in 2001 registered 13,737 cases. The next year they registered 16,484 cases. In 2003 we registered 18,703 cases and 2004 19,434 cases. So, as you can see our registration has been going up each year. In calendar year 2004 alone we registered, as I said, 19,434 cases. We closed 18,698 cases. As you can see we closed several hundred less than we registered. However, as I indicated in the last six months we've actually closed more than we've registered. So, we're keeping up with the workload and we feel that's a good accomplishment. But as you've seen as Board Members you've been busy because we've been trying to keep up with the workload in getting through this.

Chair Thornton commented that we only have 5 Board Members to address the caseload.

Deputy Chief ALJ Julie Krebs replied that is correct, so you're handling, as you indicated earlier, hundreds of cases each month to get through this. We continue to stay at an appeal rate of about 7 percent and so for the short term we're expecting to continue to see a lot of work because as they are handling the cases in the Field they do come up to the Board. And yet while we're doing this we are keeping up with everything. I just want to thank everyone who's involved with that from the staff to Board ALJs to the Board Members who are ending up doing the Decisions. Everyone's been working together to keep up with all the work.

Deputy Chief ALJ Julie Krebs also reported they are exploring a particular case for oral argument. It's been assigned to someone to review to see if it's appropriate for oral argument. It's represented on both sides. It is a tax case. It involves a registry which is an interesting area of the law and I can give you more information upon your request.

Deputy Chief ALJ Julie Krebs stated they have not yet received the Albertson's cases. But we do expect to receive those shortly in January. We have received them for one of the other cases earlier and they're still getting appeals in the Field with respect to the last part of the trade dispute.

c. Deputy Director Pam Boston. Thank you Madam Chair. I'd like to report that Patrick Barger of our Business Services Unit retired at the end of the year. Patrick worked as a facility representative, handling our Southern California Field Offices and he'll be sorely missed.

Deputy Director Pam Boston also reported they have a few exams they are in the middle of administering, for Associate Governmental Program Analyst, Associate Personnel Analyst, and Administrative Law Judge II. The final filing date for the first two exams was January 10, the final filing date on the ALJ II exam is February 11.

d. Executive Director/Chief ALJ Jay Arcellana for Deputy Director Mary Walton-Simons: the Budget Workload Division of PPM will be releasing the 05/06 Call Letters to all of the cost centers. There will be a budget committee meeting next week. We're starting to plan the budget cycle for next year.

Second item to report is that the Strategic Planning Division has begun meetings with all the representatives concerning all branches to set goals and objectives for the Agency in the years to come.

Third item: the Information Security Division will be submitting at the next Board Meeting two administrative policies which will require Board approval and Board vote. The first involves the Agency's e-mail internet policy. The second involves the Agency's Information Security Policy. The Board Members will be given a binder setting forth these policies. We've already met with the unions and obtained their concurrence.

Lastly, I would like to echo the Chair's comments, acknowledging Kris Silva. She has been with the Agency for a number of years. She was a supervisor in the Sacramento Office, and most recently a Staff Services Analyst with P&PM. She was very good with a lot of things, from CATS, working with the IT staff, the Field staff and her expertise will be missed. Fortunately she will be coming back to work as a retiree. But in response to Board Member Novey's comments, as time passes we're losing more and more good qualified people and it's going to be difficult to replace all of them. But I would like to acknowledge Kris and all of her contributions to this Agency.

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported that the San Francisco Chronicle has submitted another public records request. The request is a bit vague, and it was e-mailed to the Labor Agency, and is a request for information about a Bureau of State Audit Investigation. From what we can tell, the request relates to a recent investigation into one of our training contracts. The request should really have gone to BSA, which is the true owner of those investigations, and they publish what is available to the public—everything else is confidential.

On another subject, in July ALJs were instructed not to leave case files unattended in our waiting areas at the hearing facilities, the obvious concern being confidentiality. There is a lot of personal and confidential information in those files. The files should be available for inspection only by the parties involved in the hearing. Just recently CASE has filed a request to meet and confer on that particular instruction, stating that it impacts the working conditions of the judges. CASE believes that under the MOU we are obligated to meet with them on what they believe is a policy change.

Chair Thornton asked what is the rationale for saying there is an impact on working conditions?

Chief Counsel Hilton replied that the rationale is that where there is no support staff to provide help, the ALJs like to leave the file outside the hearing room so that they are not interrupted in hearing or while dictating in order to give the file to the next party scheduled for hearing. To do otherwise takes additional time out of their workday, and is disruptive of their hearings or dictation.

Chair Thornton commented that there is still enough time on the worktable to schedule the hearings further apart.

Chief Counsel Ralph Hilton replied that that is one possible solution, to just spread out the time between the hearings. In any event this is a situation to me that is a no-brainer. We have an obligation under the law to protect and secure these files. There's just no way that we can leave the files out in the lobby area for the parties to come and pull whatever file they want and take a look at it. We'll see where it goes from here.

Member Strom-Martin stated that she can understand how this would definitely impact your day.

Chief Counsel Ralph Hilton replied that it does represent a change for those judges who were leaving the files out in the waiting room of these hearing facilities. However, this does not justify the practice, one which should not have been engaged in anyway. How do you can claim impact with regard to a practice that shouldn't have used in the first instance.

Member Novey asked how many judges are we talking about?

Chief Counsel Ralph Hilton stated, if you are asking how many judges have complained, we don't know. The union brings these matters to our attention. The informal information that I have is this again out of the San Diego Office.

Member Richardson asked, just to clarify, do the judges read back there while they're conducting another hearing, and how much time do the participants get to review the file? Are they told to report 15 minutes early so they can review the evidence?

Executive Director/Chief ALJ Jay Arcellana stated that what happens is the judges are scheduled for cases in the morning and afternoon, with a break for lunch. When they get to the hearing facility, for instance, at 8:00 in the morning they would take all 4 hearings files and just put them on a table, for the 8:00, 9:00, 10:00, 11:00 hearings, and the parties would come in, pick up their file and review.

Member Richardson asked how do the parties know to pick up their file, where to find it?

Executive Director/Chief ALJ Jay Arcellana replied that there is a sign on the table that says, files to be reviewed by parties. It varies from location to location but there's a sign on the table. What a judge does is he'll go out and call the first party in and then after the hearing is concluded her or she would then escort the parties back out, go back into the hearing room and dictate the decision. All the while the files are out there.

Finally, Chief Counsel Ralph Hilton reported that three new cases were filed last month, and regarding board member caseload, we expect it will increase since there are fewer board members to handle the cases.

9. Unfinished & New Business:

Proposed amendment to 22 CCR 5065—Chief Counsel Ralph Hilton

This is an item I want to put up for Board vote. We want to amend our Regulations. This is a very elementary and simple change to the Regulations, and the purpose of change is to achieve higher quality review ratings. We're getting

dinged a little bit under Department of Labor guidelines. They like to have a clear statement of the issue set forth in each decision and we don't spell that out in our Regulation right now. With regard to this particular item I actually request two votes. One is a vote to go ahead with the amendment to the Regulations, but also a vote to instruct the judges to start immediately putting a statement of the issue in each decision, because I don't see this Regulation as precluding that at all. The Regulation simply states what the decision should contain. It's not an exclusive list of what the decision can contain. So, we can add to that without violating the Regulation, and I think we should do that as soon as possible so we can meet the DOL guidelines.

The other amendment relates to credibility determinations. If an ALJ makes a factual determination based on the credibility of a witness, right now the Regulation states that determination is to be set forth in the statement of facts. DOL wants it set forth in the reasons for decision, although the facts upon which that determination is made should still be set forth in the statement of facts. We do have to amend the Regulation in order to achieve that because the Regulation is too specific.

Chair Thornton stated, we need to motions, one to amend the Regulations as set forth in this handout and second to instruct the ALJs to set forth a statement of issues.

Member Novey stated that he has not had time to properly study this proposed change, so he would like to defer a vote on it until the next Board meeting.

Chair Thornton asked, do we want to vote on it now or do we want to wait until the next meeting? Ralph, is it okay ---- can wait until the next meeting?

Chief Counsel Ralph Hilton answered that it's been delayed already, so it can certainly wait until the next meeting.

Chair Thornton stated, we need a motion then to instruct the judges to start putting the statement of issue in their decisions, and we'll defer voting on the amendment to the regulation itself.

Member Richardson so moved.

Second by Member Strom-Martin. Motion put to a vote, no members opposed.

Personnel Chief Al Ramirez asked to speak:

We had a meeting with the Labor Agency last Thursday as you all know and obviously there were some concerns by the employees as to why the Agency reps were here. I'd just like to say this for the record, there were numerous questions asked and I asked one question about the consolidation of the 3 appeals boards. I said we're the largest, we're located in Sacramento, although we have field offices throughout the State and if you reorganize and create this new agency you know

it's going to be housed in Sacramento and we've got the administrative programs to basically incorporate the two other appeals boards into our Agency. I said from a programmatic, organizational and logical viewpoint it makes sense to do that. They didn't bite the bullet but I just wanted to throw that out to them and also in front of all the other staff. Then the other issue that I brought up was did you do a cost benefit analysis before you proposed this to the Little Hoover Commission and Bob Dresser stated that it was an assumption that that had been done. The other issue that I think was important was, one of the ALJs raised, is the issue about this Agency there's really no specifics as to the makeup besides the fact that there's going to be 9 Board Members. But the person that asked the question was trying to get something from the Agency as to if the Board Members are going to have term limits and how the chairperson was going to be appointed. I'd like to just briefly piggyback on what Jay said in terms of the salaries for some of the state classifications for attorneys and ALJs. There's a lot of compression between levels of working level staff and then when you get to the first supervisory level and that's why the agency was able to get a 5 percent pay differential for PJs because it was compression. They were getting the same as the ALJ II classification. That's rampant throughout state service, but at least here you were able to do something about it.

ALJ Canar: I had a little conversation with Mr. Presio of Agency about the PJs. If the administration does as they've done in the past and they did under Pete Wilson --- implementing a 5 percent pay cut - - if they implement the new pension contribution rate that they want for employees, that will be like a 5 percent pay cut for the PJs. I can't imagine why anybody would want to be a PJ.

10. Public Comment:

No public comment was submitted.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board entered into closed session. No votes were taken on any matters in closed session.